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ABSTRACT

The importance of effective communication skills between lawyers and clients is equalled only by the imperative need for sustained instruction in the development of communicative skills for the lawyer. Especially important are the nonverbal communication skills in "reading the client." The subtleties of intonation, posture, gesture, and eye contact all provide the confirmation of understanding and intensity of feeling expressed by the client. Also critical is the power of expression or encoding of behaviors. The expression of care, concern, or attention is vital to building a bond of trust and confidence. Nonverbal behaviors are also used to regulate or direct the flow of interaction. This regulation can take the form of encouraging, channeling, or terminating the relationship. Unfortunately, while courses in the substance of law abound, it is an unusual law school that includes more than trial practice, trial preparation, or settlement and negotiation. As a result, many lawyers interview poorly. The training of lawyers in such interpersonal skills as nonverbal communication, nevertheless, can be approached on at least three levels: (1) law schools and undergraduate schools, (2) workshops and seminars, and (3) continued publication in legal and other journals of research on pragmatic uses of nonverbal communication. (HOD)

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SPEECH COMMUNICATION ASSOCIATION

READING THE CLIENT: NONVERBAL COMMUNICATION AS AN INTERVIEWING TOOL

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INTRODUCTION

> Communicative problems begin when there is perception by the client that his lawyer is not listening to him.
> (Smith, Journal of Missouri Bar, 248)

> Study suggests that the effective use of communication skill during an interview is much more important than the length of the interview.
> (Smith, Journal of Missouri Bar, 252-253)

> No formula and no form book exists for client interviewing and counseling. It is more like a painting than an equation. Unfortunately, that has lured many lawyers into giving it little consideration. As a result, they do it poorly, haphazardly, and in a fashion calculated to produce client dissatisfaction, poor business, and poor practice.
> (Howarth & Hetrick, Litigation, 63)

The above quotations by lawyers and communication specialists indicate that during the interview process effective communication between client and lawyer is critical. The importance of effective skill in communication is equalled only by the imperative need for sustained instruction in the development of communicative skills for the lawyer. The purpose of this analysis is to focus primarily on a singular and powerful tool for the lawyer-client interview, specifically nonverbal communication. The exact topic is "Reading the Client: Nonverbal Communication as an Interviewing Tool." The analysis involves (1) a description of the presumptions and assumptions inherent in this type of examination, (2) an examination of some of the principles of nonverbal communication involved in the interview and (3) suggestions for programs or directions to pursue for improving nonverbal communicative skills. The wording of the topic mandates the direction of analysis, namely the use of nonverbal communication from the perspective of the lawyer as opposed to the client. The intent of this paper, while realizing the merits of reciprocal value, will focus on the lawyer and skills useful to the professional.

Presumptions

The first presumption is that the client-lawyer interview is critical to the legal process. In most situations the initial and subsequent interviews establish not only information judicious to handling of the case but also foster a rapport between the client and the lawyer. The interview pragmatically establishes a marriage between client's

needs and lawyer's ability, thus a matrix of meaning (Howarth & Hetrick, 25). The committed task for the attorney is to nurture and sharpen all available means of data gathering and rapport building. The attorney-client relationship is just that, it is a relationship, a relationship built on correctness of shared meanings, openness of expectations, and confidence building (Cindy Malaun, in interview, Bredemeier, Malaun & Miller, 1984). It is accurate to conclude that the attorney-client relationship is vital to the success of the legal proceedings.

A second presumption surrounds the importance of nonverbal communication in "reading the client." Is the skill of encoding and decoding of client messages critical to total effectiveness and satisfaction? The presumption is an affirmative answer. The attorney's ability (1) to decipher meanings through kinesic or nonverbal behavior and (2) to successfully share or express intended meanings is the cornerstone of success now and in the future (Smith, April, March, & June, 1978; Peskin, Summer, 1980; Bredemeier, Malaun & Miller, 1984; Nizer, 1978 and Naisbitt, 1982). It is also important to note that nonverbal behaviors in face-to-face interaction, e.g.,the attorney-client interview carry between 65% and 93% of the meaning (Knapp, 1980; Mehrabian, 1972). Nonverbal behaviors are cues that we send or receive beyond the word unit itself. These behaviors involve bodily cues of posture distance, stance, touch, eye contact, and gesture as well as paralinguistic cues of the voice; artifacts of clothing, jewelry and glasses and environmental cues (Knapp, 1980; Rosenfeld and Civikly, 1976). Considerable interest and research have been generated in many areas of nonverbal behaviors. Because of time and space limitations this analysis will focus primarily on bodily behaviors rather than artifactual and environmental cues.

The third and final presumption is lawyers are generally not trained in communicative skills such as nonverbal behaviors. The presumption has merit. Don Howarth, Professor of Law at Pepperdine Law School states,

> While courses in the substance of law abound, it is an unusual law school that includes more than trial practice, trial preparation, or settlement and negotiation. Techniques and problems in client interviewing and counseling seldom find their way to the appellate reports, even though such activities far outweigh appellate and even trial advocacy as a fraction of lawyers' working time. As a result, many lawyers interview poorly. It is a major source of client difficulty.
> (Howarth & Hetrick, 25; see also Bredemeier, Malaun & Miller, 1984 & Smith, June, 1978).

An attempt to provide training in interpersonal skills is obviously warranted.

In essence, three presumptions are posited. First, the client-lawyer interview is critical to the legal process. Second, nonverbal communication is important in "reading the client" and third, attorneys are not necessarily trained in basic interpersonal skills necessary for effective interviewing. The subsequent portion of this paper focuses not on presumptions but rather on principles of nonverbal communication useful for the lawyer in "reading the client."

Principles

> Those of us who keep our eyes open can read volumes into what we see going on around us.
> (E.T. Hall in Essentials of Nonverbal Communication, Knapp, 1)

The essence of anthropologist Edward T. Hall's words indeed have impact. The matrix of matching attorney's abilities and client's needs reaches highest potential when the professional is adept at observing the client, expressing or showing attention and directing the flow of interaction. Three areas of analysis are applicable for viewing the principles of effective nonverbal communication, namely, the power of observation or of decoding messages through nonverbal channels; the power of expressing or encoding of attention to the client and the power to regulate or focus direction of the interaction.

Observation

The impact of Edward T. Hall's words have the truest meaning at this point. With the power of the senses an individual hears messages beyond the word as well as the word unit itself. Research suggests that as much as 93% of the meaning exchanged is through the nonverbal channels (Mehrabian, 1972). Our learning processes may involve as much as 94% through the sense of sight and hearing, 83% and 11% respectively (Nelson & Pearson, 1981). The attorney who successfully blends his/her abilities with the client's needs is a professional who has developed the skill of listening and observing.

> "Sensitive listening to the client is required to avoid errors. The lawyer who is searching for messages can find them by listening and watching the client" (Smith, June, 1978, 249).

The subtleties of intonation, posture, gesture and eye contact all provide the confirmation of understanding and intensity of feeling expressed by the client.

The power of decoding messages from the client is not an innate ability but rather a skill that can be developed and sharpened through effective training. Psychologists and sociologists Dane Archer and Robin Akert have developed "a naturalistic method of studying the process of interpretation or decoding

of meanings" (Archer & Akert, Psychology Today, October, 1977). The system called Social Interpretations Task (SIT) involves approximately 20 different video-taped scenes of 30 to 60 seconds in length. The scenes are natural, spontaneous interactions of one to four people. Through the administration of a multiple-choice question for each scene the power of interpretation was observed. Those who answered the question based only on a transcript of the scenes scored 51%; whereas, those who only observed the video tape scored 87% accuracy. The difference of 36% is significant. The authors state,

> Research with the Social Interpretations Task shows that most people possess remarkable interpretative powers. We are able to detect and 'read' dozens or even hundreds of subtle nonverbal cues, even though they stream by us and disappear so rapidly that most of us are unable to remember more than a few of them...The most accurate judges of other people attend to their nonverbal performances and not merely to what they say (Archer & Akert, 119-120).

For additional information on the systems available for improving observation or decoding abilities the reader is also encouraged to explore the Facial Meaning Sensitivity Test as developed by Dale Leathers from the University of Georgia. The ability to encode and decode successfully through facial messages may be improved by as much as 51%. The system is applicable across a variety of settings including the professions of business, law and medicine (Leathers, Nonverbal Communication Systems, 26-32).

Attention

The power of observation is indeed a powerful tool for interviewing the client. As critical, however, is the power of expressing or encoding of behaviors. The expression of care, concern or attention is vital to building a bond of trust and confidence. As attorney, Spencer Miller, recently said the ultimate factor of the interview is trust, "we will all decide whether we will believe or disbelieve a client" (Bredemeier, Malaun & Miller, August 23, 1984) In the expression of attention, care, concern and trust, six factors have proven successful. Psychologist Arthur Wassmer has coined an appropriate acronym for the six factors or body signals, SOFTEN, which stands for:

S mile
O pen your posture
F orward lean
T ouch
E ye contact
N od (head nods)
(Wassmer, 32-34)

These six body signals generate positive feelings of pleasantness and responsiveness. The client wants, needs, and deserves a professional who shows that he is attentive and open to the matching of his abilities to the client's needs. The most fundamental of all needs, however, is for the client to sense that the lawyer is truly listening and giving attention to interaction of the moment. The attention need not, however, be construed to indicate agreement.

As a channel of attention the face often expresses what we feel while the rest of the body tells us how strongly we feel it. The effective combination of bodily cues and facial gestures results in an atmosphere that allows facts to surface and feelings to be expressed.

The use of these six body signals in no way should be construed as an exercise in sophistry because it is not. The ancient Greeks including Aristotle have long defended the study of expression as a noble and uplifting art. Any tool of expression can be used to compromise ethical concerns. The repeated use or misuse of that tool will eventually have its just reward. Those who may be tempted to misuse nonverbal expressions need only to read Louis Nizer's excellent treatment of the subject (Reflections Without Mirrors, 1978, 213-219). As Ralph Waldo Emerson said, "what you are speaks so loud that I cannot hear what you are saying." The attention shown the client should be with the same care or sincerity that one desires for himself.

The last area of focus when "reading the client" is the area of direction. Nonverbal behaviors are often used to regulate or direct the flow of interaction. This regulation can take the form of encouraging, channeling or terminating the relationship. Lawyers need to be adept at controlling or directing the interview.

Direction

The eyes are truly the windows of our soul. Of all kinesic behavior the eye is most expressive and powerful. The gospel of Matthew succinctly expresses the power of the eye,

> The eye is the lamp of the body. If your eyes are good, your whole body will be full of light. But if your eyes are bad, your whole body will be full of darkness (Matthew 6:22, NIV).

Eye contact serves several functions and they include regulating or directing the flow of communication, monitoring feedback, expressing emotions, and communicating the nature of the interpersonal relationship (Knapp, 1980, 184-191). All of these functions are fundamental to the direction the interview will take.

The lawyer when "reading the client" must be aware that the face is one of the greatest sources of information or misinformation that we have. Through facial expression we can attempt to conceal our true feelings. The smile, often associated with more pleasant circumstances, can hide pain and even fear but the eyes are truly the "windows of our soul." Through the science of pupillometrics and such pioneering work by E.H. Hess we now have an index to measurement of attention and possibly attitude (Rosen, Future Facts, 229-231; Knapp, 1980, 195-198). The science of pupillometrics suggests that under normal conditions, e.g., proper lighting, absence of adverse medication, etc., pupils will dilate for messages that produce attention in the respondent. The stimuli from any of the five major senses can produce the change in pupil size. For example, if something is presented by the lawyer to the client, either visually or nonvisually, and if it truly gains the client's attention then the pupils will dilate. It is also posited by Hess that pupil dilation is directly correlated to positive and negative attitudes toward that which is presented.

While the research about attitudes is not conclusive the tentative findings are intriguing (Knapp, 1980, 195-197). If validated, the conclusion related to attitude and pupil movement can prove useful to the lawyer. The pupils of the client would dilate if that which gains his attention is favorable and constrict if negative. The implication of decoding true feelings is clearly apparent for the lawyer. If the client should have a phobia and is reticent in expressing that condition then the "reading" of nonverbal cues may assist in understanding the extent of the problem as well as assisting in the direction of resolution. Our eyes may indeed be an accurate index of interest, attitudes and emotions. The professional is well advised to consider the impact of gaze and mutual gaze in the interview process.

The principles of nonverbal communication most useful for the lawyer can be found in the three functions of observation, attention, and direction. The presumptions, as previously described, lay the ground work for at least a prima facie case for the importance of nonverbal communication in "reading the client." This analysis is incomplete, however, without at least a cursory statement regarding possible programs of preparation or training for the lawyer.

Programs

The preparation and training of lawyers in interpersonal communication legitimately require the focus of an entire communication program. At this point, however, a few observations and suggestions are appropriate. The training of lawyers in interpersonal skills, e.g., nonverbal communication

should be approached on at least three levels. These levels include (1) law school and undergraduate schools, (2) workshops and seminars and (3) continued publication through legal journals of pragmatic uses of nonverbal communication.

As previously noted, little training in communication skills is required by law schools, either as an entrance or exit competency. In support of the critical need Joel Hyatt, president of the chain of legal clinics said before the American Bar Association's 106th annual meeting in Chicago,

> Many law schools were failing to teach students to become lawyers. The schools should be teaching the law, how to practice from the client's perspective and how to deliver legal services most efficiently. In three years at Yale Law School, I didn't hear the word "client" once that I can remember (Ostroff, Kansas City Times, August 8, 1984, B8).

Competency requirements perhaps need to be instituted for the prospective lawyer. While not a required course, the School of Law at the University of Missouri-Kansas City now offers a limited enrollment course designed to nurture and sharpen communication skills. It is limited enrollment because of the individualized approach in assessing and building communication. The course focuses on skills useful in the client-lawyer interaction. This course is a beginning and certainly a step in the right direction (Cindy Malaun, in interview, Bredemeier, Malaun & Miller, 1984). If law schools are burdened with complexities of curricular additions or modifications perhaps then requirements can be strengthened in pre-law programs at the undergraduate level. This may reduce the burden on law schools while also giving pre-law students time and flexibility adequate to meet entrance competencies for communicative skills. Undergraduate programs often provide courses in interpersonal communication, nonverbal communication, interviewing and in forensics and debate. Properly taught, each of these courses could sharpen the lawyer's abilities to better meet the needs of the client.

A second area for improving communicative skills for lawyers is through convention programs, such as this one, and through seminars and workshops. As public school teachers have developed "in-service" instruction, so could the legal profession. The Speech Communication Association began its leadership in this area by co-sponsoring a summer conference on "Communication Strategies in the Practice of Lawyering" (Spectra, April 1983, 1). While the attempt is noble it is just a beginning.

The beginning could be extended by modeling client-lawyer interviews after workshops designed to improve courtroom communication skills. Courtroom skills are often the focus of special seminars and workshops (Pennsylvania Law Journal-Report, September 27, 1982, 10-12; The American Lawyer, May, 1980, 19-20). By extending the "in-service" seminars the experienced professional has the opportunity for improvement.

A third and final area of suggestion centers on the continued publication of research related to nonverbal communication in the interview. More literature has been published in the last 5-10 years about nonverbal behaviors than has been published in the past 95-100 years. Research suggests that this conclusion is applicable to the law profession. Through the "Niagara" of professional writings the lawyer can enjoy at his/her own pace the benefits of thought and of reading about nonverbal cues. Only a caution remains at this point. The "Niagara" of literature that finds its way into bookstore displays and even into the professional journals must be taken with a "grain of salt." By realizing that nonverbal communication is a cue to our behavior and not always a fact the "self help manuals" can be read with discretion. In her excellent critique of literature about nonverbal communication, Judith Hall Koivumaki stated,

> In short, nonverbal communication seems relevant in an enormous range of ways, and there is much research both good and bad being done in it.
> (Koivumaki, 28)

The lawyer as he or she reads, observes, and practices the subtlety of communication must remember that nonverbal behaviors provide only a tool, a tool for the honorable purpose of matching a lawyer's ability with the client's need.

CONCLUSION

The purpose of this paper was to explore the topic of "reading the client: nonverbal communication as an interviewing tool." The three part analysis focused on a critical goal of the interview process, namely a matrix of matching effectively the client's needs with abilities of the lawyer. The role of nonverbal communication was examined from three perspectives (1) the major presumptions surrounding the use of nonverbal communication in "reading the client," (2) some pragmatic principles in the use of nonverbal behaviors and (3) suggestions for programs or avenues of improving the interpersonal skills of lawyers in the interview setting. As the lawyer "reads" the client, as he listens with eyes as well as ears it may be of enormous satisfaction to realize that one of the greatest teachers, Christ himself, had something to say on the subject,

If anyone has ears let him hear. Consider carefully what you hear. With the measure you use it will be measured to you-and even more.

(Mark 4:23-24, NIV)

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